

## SCHEDULE 3.6(A) - ONLINE SERVICES

### 1. APPLICATION

- 1.1 This Schedule, which contains a description of the Online Services form part of this Agreement entered into between the Parties for the provision of the Online Services.
- 1.2 Definitions and interpretations that are specific to this Schedule are set out in **Annex 1** and apply in addition to the definitions and interpretations set out in **Schedule 1 (Definitions)** of the Agreement.

### 2. SERVICE DESCRIPTION

- 2.1 The Supplier shall provide the Customer with Microsoft hosted online services to which the Customer subscribes under a Microsoft Cloud Agreement, comprising of one or more of the following as set out in the applicable Order:
- 2.1.1 Office 365 Services;
- 2.1.2 Microsoft Dynamics Online Services;
- 2.1.3 Microsoft Azure Services; or
- 2.1.4 Microsoft Intune Online Services hereinafter defined as **"Online Services"**.
- 2.2 The Supplier is an authorised reseller of Microsoft products and is authorised to licence and grant the Use Rights within the United Kingdom and countries located within the European Union.
- 2.3 The Supplier's relationship with Microsoft is that of a reseller and the Supplier is therefore acting as an independent contractor for the purposes of this Agreement. The Supplier and Microsoft do not have any agency, franchise or fiduciary relationship.

### 3. CUSTOMER OBLIGATIONS

- 3.1 The Supplier's ability to grant the Customer the Use Rights is subject to the Customer's acceptance of the Microsoft Cloud Agreement and the applicable Product Terms.
- 3.2 The Customer, in placing an Order with the Supplier, warrants and represents acceptance of the Microsoft Cloud Agreement and the applicable Online Services Terms.
- 3.3 The Customer must acquire and assign the appropriate SL required for its use of the Online Service. Each user that accesses the Online Service must be assigned a SL or access the Online Service only through a Licensed Device that has been assigned a SL, unless specified otherwise in the Online Services Terms.
- 3.4 Any SL provided pursuant to this Agreement are non-exclusive, may only be used in connection with the Customer's own internal business purposes and may not be reassigned, unless otherwise specifically agreed with the Supplier and/or Microsoft.
- 3.5 The Customer acknowledges and accepts that a SL are subject to any further restrictions imposed pursuant to the Microsoft Cloud Agreement.

### 4. SERVICE CONDITIONS

- 4.1 The Customer may use the Online Services and related Software which are detailed in the Order in accordance with this Agreement, the Supplier's and/or Microsoft's Acceptable Use Policy, and as expressly permitted in the Microsoft Cloud Agreement.
- 4.2 The Customer may be required by the Supplier and/or Microsoft to install certain Microsoft Software to use the Online Services, if so, the following terms apply:
- 4.2.1 the Customer may install and use the Software only for use with the Online Services;
- 4.2.2 the Product Terms may limit the number of copies of the Software the Customer may use or the number of Licensed Devices on which the Customer may use it;
- 4.2.3 the Customer's Use Rights begin when the Online Service are activated and ends when the Customer's Use Rights for the Online Service ends;
- 4.2.4 the Customer must uninstall the Software when the Customer's Use Rights ends; and
- 4.2.5 the Supplier and/or Microsoft may disable the Online Service at any time.
- 4.3 Licenced Devices on which the Software is installed may periodically provide information to enable Microsoft to check the version and verify the Software is properly licensed.
- 4.4 The Customer may only obtain updates or upgrades for the Software from the Supplier or Microsoft and Microsoft may recommend or download to Licensed Devices updates or supplements to the Software, with or without notice to the Customer.
- 4.5 Where Microsoft introduces features, supplements or related software that are new (i.e. that were not previously included with the Subscription), Microsoft may provide terms or make updates to the Product Terms that apply to the Customer's use of those new features, supplements and related software.
- 4.6 The Supplier and Microsoft may provide the Customer with information and notices about the Online Services electronically, including via email, through the portal for the Online Service, or through a web site that the Supplier or Microsoft identifies.
- 4.7 The Software may contain third party software components and unless otherwise disclosed in that software, Microsoft, not the third party, licences these components to the Customer under Microsoft's licence terms and notices.
- ### 5. PRICING AND PAYMENT
- 5.1 The prices for each Product detailed in the Order shall be indicative and estimated. The actual prices may vary depending on usage, date of purchase, currency and inflation.
- 5.2 The Supplier shall raise invoices as follows;

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- 5.2.1 for Pay as You Go Products, monthly and in relation to actual usage by the Customer, in the preceding month based on the applicable charges from time to time; and
- 5.2.2 for Subscriptions, monthly in advance for the applicable Subscription price from time to time.
- 5.3 The Supplier reserves the right to vary the prices in respect of any;
- 5.3.1 Pay as You Go Product at any time upon giving the Customer at least seven (7) days' notice; and
- 5.3.2 Subscription upon expiry of its Term being twelve (12) months from the date of the Order.
- 5.4 All invoices are payable within thirty (30) dates of receipt.
- 6. ONLINE SERVICES SUPPORT AND SERVICE LEVELS**
- 6.1 The Supplier shall provide the Customer with Support Services as defined in **Schedule 4.3 (Support Services)** and full details of availability and contact information for Support Services can be found on the Supplier's website at <https://chessict.co.uk/company#faq>;
- 6.2 For the avoidance of doubt, the Supplier will not provide support services in relation to any customisation or configuration of the Products under this Agreement.
- 6.3 The Customer acknowledges and agrees that where an undocumented scenario arises it may be necessary for the Supplier to escalate an issue to Microsoft for resolution.
- 6.4 Notwithstanding the provisions of this Agreement, and with the knowledge that reasonable efforts will be made to diagnose and resolve faults that occur, the Supplier makes no warranties that the support services will be successful in resolving all issues that arise.
- 6.5 The Supplier does not guarantee that the Products will be continuously available or free from service failures, however the Microsoft SLA makes certain commitments as to the Products and in the event of a service failure, the Customer may be entitled to raise a claim with the Supplier pursuant to the Microsoft SLA.
- 6.6 In accordance with the Microsoft SLA, the Supplier will escalate a claim from the Customer to Microsoft for validation in accordance with the Microsoft standard SLA review process. Should Microsoft accept a claim, the Supplier will notify you and any credit issued by Microsoft will be provided to the Customer.
- 6.7 In the event that Microsoft does not accept the claim pursuant to the Microsoft SLA, the Supplier may at its sole discretion provide the Customer with a service credit. The Supplier's liability to pay the Customer service credits under this Paragraph 6.7 shall be the Customer's sole remedy for service failures.
- 6.8 The Supplier accepts no responsibility or liability for hardware problems or software applications identified in the Order where they are subject to improper use, neglect or any modification by the Customer.
- 7. CUSTOMER DATA**
- 7.1 Following cancellation of a Product or termination of the Agreement, the Customer shall have a period of ninety (90) days in which to migrate Customer Data. However, where your Online Services are suspended by the Supplier and subsequently terminated, the Customer agrees that the Supplier may delete the Customer Data immediately.
- 7.2 Under no circumstances shall the Supplier be liable for any loss or damage to Customer Data. The Customer accepts the responsibility for backing up Customer Data and shall ensure that the Customer's processes in this respect are adequate.
- 8. WARRANTIES AND REPRESENTATIONS**
- 8.1 The Customer acknowledges and accepts that:
- 8.1.1 the only warranties provided to the Customer in respect of the Products are those which are stated within the Microsoft Cloud Agreement at clause 5(a) which are limited pursuant to clause 5(b) and 5(c); and
- 8.1.2 the remedies in respect of any breach of warranty is limited to those detailed at clause 5 of the Microsoft Cloud Agreement.
- 8.2 Other than those warranties referred to at Paragraph 8.1 above, the Supplier provides no warranties whether express, implied, statutory or otherwise, including warranties of merchantability or fitness for a particular purpose. These disclaimers apply except to the extent applicable law does not permit them.
- 8.3 In order to make a claim for breach of warranty, the Customer must first raise this with the Supplier to escalate to Microsoft for validation in accordance with the Microsoft standard review process.
- 9. LIMITATION OF LIABILITY**
- 9.1 The aggregate liability of each party for claims under the Agreement is limited to direct damages up to the amount paid under the Agreement for the Products during the twelve (12) months before the cause of action arose; provided that in no event will a party's aggregate liability for any Product exceed the amount paid for that Product during the Subscription.
- 10. INTELLECTUAL PROPERTY**
- 10.1 Except for any Use Rights applicable to the Products as expressly granted under the Agreement, the Customer shall not acquire in any way, any title, rights of ownership, or Intellectual Property Rights whatever nature in the Products or in any copies of it and no Intellectual Property Rights of either party are transferred or licensed as a result of the Agreement.
- 11. PROFESSIONAL SERVICES**

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- 11.1 Where the Customer purchases Professional Services, the performance of those Professional Services will be subject to terms and conditions in **Schedule 4.2 (Professional Services)**.

## ANNEX 1 - DEFINITIONS

**Customer Data** means all data, including text, sound, video, or image files, and software, that are provided to the Supplier and/or Microsoft by, or on behalf of, the Customer through use of the Online Service.

**Licensed Device** means the single physical hardware system to which a license is assigned. For the purposes of this definition, a hardware partition or blade shall be considered a separate licence;

**Licensing Site** means <http://www.microsoft.com/licensing/contracts>;

**Microsoft** means Microsoft Ireland Operations Limited;

**Microsoft Cloud Agreement** means the Microsoft Cloud Agreement as published at <https://docs.microsoft.com/en-us/partner-center/agreements> together with the Microsoft Product Terms and SLA;

**Product** means all products identified in the Product Terms, such as all Software, Online Services and other web-based services;

**Product Terms** means the additional terms that apply to the Customer's use of Online Services published on the Licensing Site and updated from time to time;

**Professional Services** means Product support services and consulting services provided by the Supplier or Microsoft under the Professional Service Terms. "Professional Services" does not include Online Services;

**Professional Service Terms** means the document that provides information about Professional Services which is published at <http://www.chessict.co.uk> and is updated from time to time;

**SL** means Subscription licence(s);

**SLA** means the service level agreement, which specifies the minimum service level for Online Services and is published on the Licensing Site;

**Software** means licenced copies of Microsoft software identified in the Product Terms. Software does not include Online Services, but Software may be a part of an Online Service;

**Subscription** means an enrolment for Online Services for a defined Term as provided under this Agreement;

**Support Services** means account set-up, sign-up, accounts and billing, service and software updates, client connectivity and desktop performance and service issues within the control of the Supplier;

**Term** means the duration of a Subscription (e.g. 30 days or 12 months);

**Use Rights** means the use rights or terms of service for each Product published on the Licensing Site and updated from time to time. The Use Rights supersede the terms of any end user license agreement that accompanies a Product. The Use Rights for Software are published by Microsoft in the Product Terms.